

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORKWenli

(In the space above enter the full name(s) of the plaintiff(s)/petitioner(s).)

09 Civ. 9663 (RJS) (ATP)

- against -

Mount Sinai School of Medicine  
ET AL.

(In the space above enter the full name(s) of the defendant(s)/respondent(s).)

## NOTICE OF MOTION

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 11/13/12PLEASE TAKE NOTICE that upon the annexed affirmation of Wenli,  
(name)affirmed on November 13, 2012, and upon the exhibits attached thereto (delete if no  
(date)

exhibits), the accompanying Memorandum of Law in support of this motion (delete if there is no

Memorandum of Law), and the pleadings herein, plaintiff/defendant will move this Court, before

Judge Honor Richard J. Sullivan United States District/Magistrate Judge, for an order  
(Judge's name) (circle one)

pursuant to Rule \_\_\_\_\_ of the Federal Rules of Civil Procedure granting (state what you want the

Judge to order): Motion to Reconsider Negligence and Intentional Tort① Motion to a free copy of Hearing Minutes on Oct. 23rd, 2012② Motion to a Pro bono lawyer

I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, NY  
(city) (state)November 13, 2012  
(month) (day) (year)Signature WenliAddress P.O. Box 1027New York, NY 10027Telephone Number (646) 897-3589

Fax Number (if you have one)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORKWentz

(In the space above enter the full name(s) of the plaintiff(s)/petitioner(s).)

09 Civ. 9663 (JS) (JTP)

- against -

Monterey School of MedicineET ALAFFIRMATION IN  
SUPPORT OF MOTION

(In the space above enter the full name(s) of the defendant(s)/respondent(s).)

I, Wentz, affirm under penalty of perjury that:1. I, Wentz, am the plaintiff/defendant in the above entitled action,

and respectfully move this Court to issue an order

(circle one)

Motion to Recognize Jurisdiction to

(state what you want the Judge to order)

2. The reason why I am entitled to the relief I seek is the following

(state all your reasons)

using additional paragraphs and sheets of paper as necessary):

See attachedNegligence & Intentional Tort  
Minnes on  
Oct. 23rd. 2012  
(3) Motion to  
a pro bono  
lawyer.

WHEREFORE, I respectfully request that the Court grant this motion, as well as such other and further relief as may be just and proper.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, NY  
(city) (state)  
November, 13, 2012  
(month) (day) (year)Signature Wentz  
Address P.O. Box 1007  
New York, NY 10027  
Telephone Number (646) 897-3589  
Fax Number (if you have one) \_\_\_\_\_

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

Wesli,

(In the space above enter the full name(s) of the plaintiff(s)/petitioner(s).)

09 Civ. 9663 (RJS) (ASP)

- against -

Albany School of Medicine  
ET AL

AFFIRMATION OF SERVICE

(In the space above enter the full name(s) of the defendant(s)/respondent(s).)

I, Wesli  
(name)

declare under penalty of perjury that I have

served a copy of the attached

① Motion to Reconsider Negligence / Intentional Tort  
② Motion to a free copy of Hearing Minutes on Oct. 23, 12  
③ Motion re Pro bono Parity  
(document you are serving)

upon Mr. Ray McEvoy / Ms. Julie Daur  
(name of person served)

whose address is 750 Lexington Ave

New York NY 10022  
(where you served document)

by

Personal delivery  
(how you served document: For example - personal delivery, mail, overnight express, etc.)

Dated:

New York  
(town/city)

NY  
(state)

November  
(month)

13, 2012  
(day) (year)

Signature

Wesli

Address

P.O. Box 1027

City, State

New York : NY

Zip Code

10027

Telephone Number

(646) 897-3589

**Dear Judge Honor Sullivan:**

Here is my response regarding the Order on October 22, 2012.

Plaintiff appears to request that the Court reconsider, for the third time, its prior decision to dismiss as untimely Plaintiff's claims for negligence and medical malpractice.<sup>1</sup> Although Plaintiff states that clerks in the *Pro Se* Office for the Court of Appeals for the Second Circuit incorrectly informed her that there was no deadline for filing claims for medical malpractice and negligence, Plaintiff never previously suggested that this was a grounds for tolling the limitations period. Instead, Plaintiff's opposition to Defendants' motion to dismiss relied on the fact that

1. In my Declaration on November 30, 2011 (Page 63), I wrote "Ms. Crossman helped me send the "Notice" to Mount Sinai about this lawsuit. She used to tell me that I could file my Amended Complaint any time, and she never heard that there is time limitation for claims of Medical Malpractice and Negligence. I feel that I have tried my best to follow instructions to run my claims in the right "tracks". So, it's incorrect for the Judge Honor to say that I never previously suggested that this was a ground for tolling the limitations period.

In the paragraph above, I talked about Medical Malpractice and Negligence at the same time. Because Judge Honor already has a decision for Medical Malpractice; here I only talk about the Negligence. After doing research, I found: First: The **Negligence Law** considers a variety of factors in determining whether a person has acted as the hypothetical reasonable person would have acted in a similar situation. These factors include the knowledge, experience, and perception of the person, the activity the person is engaging in, the physical characteristics of the person, and the circumstances surrounding the person's actions. Second: In order to establish negligence as a Cause of Action under the law of TORTS, a plaintiff must prove that the defendant had a duty to the plaintiff, the defendant breached that duty by failing to conform to the required standard of conduct, the defendant's negligent conduct was the cause of the harm to the plaintiff, and the plaintiff was, in fact, harmed or damaged. Most of defendants in my complaint list at least own Master or PH.D degrees; they all work in Mount Sinai Medical Center. My office was only one and half block away from the Mount Sinai Emergency Room. No doubt that their rescue knowledge and medical experience all approach higher level.

None of them has any physical problem to prohibit them calling "911", stop them sending me to the Emergency Room immediately instead of locking me in my office over 30 minutes (Defendants Juan Wisnivesky and Jacqueline Arciniega), carefully checking where is my piercing from (defendants Dr. Patel and Dr. Facina) and finding out the facts before sustaining the dismiss (Defendants Karen Johnson and Jeff Cohen). The harm and the actions which they did to me, also the injury and consequence which caused to me are much more serious and inhumanity based on their knowledge, experience and perception. As I stated in my Amend Complaint on July 7, 2011, Declaration on November 30, 2011 and other Motions, defendants' actions to me can't be done by one person only. Their purposes and actions are intentional and conspiracy. It should not be catalyzed and barred by Workers' Compensation Law. Here is an instance of negligence (*Palsgraf v. Long Island Railroad Co.*, 248 N.Y. 339, 162 N.E. 99 (N.Y. 1928), even though in this case, the Negligence didn't exist, but Chief Judge Benjamin Cardozo's judgment have sincerely continence people in about one hundred years. So I disagree that my claim of the Negligence was dismissed because it was barred by the "Workers' Compensation Law". Judge Honor please reconsider the Negligence.

2. I appreciate that the Judge Honor suggested me to use "Intentional Tort" as a terminology to describe one of my claims, I take it. It does fit in with lots of contents of my complaint. ( *Vosburg v. Putney*, 80 Wis. 523, 50 N.W. 403 (Wisc.1891)). I don't know Laws, not a lawyer also have no a lawyer to assist me, so I only use evidence and facts to prove my complaint. Certainly it's the best to use the exact terminologies. However, it doesn't direct any change to the evidence and facts. Currently I don't think that I need to amend my complaint only for new terminologies. I already told the Court: All evidence I have provided is only small portion of my complete evidence and facts. Depends on the case status, if I need to amend complaint again, I will submit request.

3. In my "Amended Complaint" on July 7, 2011(Page 10 and Page 12) and the Declaration on

November 30, 2011, I already mentioned claims of “Intentional infliction of emotional distress” (Page 18, page 68, Declaration), I also used “Tort Laws” to prove my claims and statements. But until now, I have not seen any decision.

4. In the Order dated on October 22, 2012, Judge Honor denied my request of recues because of “no constitute grounds” also thinks that my request is “troubling contention”. The “constitute grounds” is from so many records in my docket package in the past four years. I don’t make that decision frivolously. Those records are evidence from the Judge Honor instead of me. First, I don’t need to tell how a Judge should perform the duty. But I know that “A Judge Shall Perform the Duties of Judicial Office impartially and Diligently” . Looking through the past four years, so many instances in my docket package has proved Judge Honor’s prejudice and how your honor has abused your position and power to judge my case; the purpose and intention are so obvious more than defendants’ lawyer. I even wonder who really takes the position of Judge in my case, your Judge or defendants’ lawyer? If the plaintiff was an American, I am sure that the treatment should be quite opposite. Second, I don’t have any objection to cooperate with the Court for the discovery processes if they are necessary. However, ignoring or garbling existed evidence which can clarify the facts but keep twining with the timing only, also disregarding the official Medical report from Mount Sinai but insisting to dismiss Medical Malpractice and Negligence, it means that Judge Honor purposely refuses to take all of my statements and evidence. In that way, except the bias, prejudice and discrimination to me and my evidence, I can’t find other reasons to explain why Judge Honor did so. Otherwise, if your Honor has carefully reviewed my evidence, what are the reasons to do so? If you have not, what are the reasons to do so? How can I let this kind of treatment keep going on? Third, I don’t understand why my request is called “troubling contention”? (*The New York Times v. Sullivan* (376 U.S. 254 [1964])). Can these kinds of words appear in the official Order? Is it professional, official and respectful? I don’t understand why Judge Honor reacted like this. I just speak my feeling and decision based on how you honor has treated my case. It doesn’t mean that I don’t respect your



Honor. Should I just keep silence no matter how your honor treats my case? Is this right attitude to my voice? Does your Honor reply the same to American's voices? This rightly exposes your attitude of bias, prejudice and crimination to me and my case also proves my decision why I request you to recues. Your Honor is the Judge of my petition. In your mind, I am neither an American nor a Caucasian, neither rich nor power like Mount Sinai; Should I have no rights to speak my feeling and decision by standing at the same level like them? So, I feel very disappointed and regret: A great Federal Judge, a Laws performer like your Honor with plenty of view, knowledge, experience and reputation, it's really improperly and unfairly to perform your duty and treat me and my case. Fourth, I have to speak it again: English is not my native language. But, just as I did my **Oath** in the hearing on October 23, 2012, I have enough evidence and facts but also only tell the facts and show the evidence to the Court. Those support me to come here and insist on fighting with Mount Sinai, such a rich and strong organization. Certainly I don't know Laws also have no lawyer, but, I am going to prove that those defendants are really liars. However, those who have made so many fake documents also can't show any evidence is still beyond the arm of the law, could it be said that America Laws are only made for those rich and strong group even though they have violated Laws also have hired Laws performers to protect them?

5. I already read the Policy many times also consult with several lawyers, the Pro se litigants have no time limitation to apply Pro Bono lawyer. I meet the criteria to apply the Pro Bono lawyer any time. Even though it's possible that scarcity of pro bono lawyer is the fact, I can wait in line like other litigants for more choices. If Judge Honor even doesn't grant this opportunity one more time, I feel that I am not equally treated like other pro se litigants. I don't understand why other litigants can have more choices but I can't. Regarding the Pro Bono lawyer from the Vladeck, Waldman, Elias & Engelhard, P.C., I don't think that she is right person for my case. I am the petitioner; I think that I have to be responsible for my case also have rights to choose the right lawyer. Her attitude and points to me and my case, including her manner and her decision are too far to meet

my request to be my lawyer. How can I choose a lawyer who distrusted and disrespected me and my case but only got rid of me and my case to represent me? My case is very complicated; I need a pro bono lawyer to assist me. I hope that she is not barrier for me to choose other Pro bono lawyer. I hope that Judge honor can grant my application.

6. I am requesting to have a free copy of hearing minutes on October 23, 2012.

Regarding tolling the "Medical Malpractice", except the representative in the Second Circuit Court, I am going to provide more evidence upon Judge Honor's request. No matter your Honor works with my case in the future, for my case, I will act in the right way.

Sincerely,



Wen Liu

November 10, 2012